**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Civil Writ Petition No. 1322 of 2003 (S/S)**
**(Old Number 5620 of 1996)**

Karan Pal ……. Petitioners.

Versus

State of Uttar Pradesh and
Others …… Respondents

Date of decision: 26, October 2004

For the approval of:

**Hon'ble Mr. Justice P.C. Pant**

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

Whether the reporters be allowed to see the judgment? (Yes)

**Reserved Judgment**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Civil Writ Petition No. 1322 of 2003 (S/S)**
**(Old Number 5620 of 1996)**

Karan Pal ……. Petitioner.

Versus

1. State of Uttar Pradesh,
   Through Principal Secretary,
   Uttarakhand Vikas,
   Civil Secretariat, Lucknow
2. The Director,
   Training & Employment,
   Government of U.P.,
   Lucknow.
3. Kumaon Mandal Vikas Nigam Ltd.
   Post Office, Bhimtal
   District Nainital.
4. Teletronix Limited,
   Industrial Estate,
   Post Office, Bhimtal,
   District Nainital ……. Respondents

Mr. I.P. Gairola, learned counsel for the petitioner.
Mr. U.K. Uniyal, Senior Advocate assisted by
Mr. S. Saharia, learned counsel for respondent Nos. 3 & 4.
Learned Standing Counsel for the State.

**Hon'ble P. C. Pant, J.**

By means of this writ petition, filed under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari for quashing the appointment made against the post of Instructor from any other source except from amongst the retrenched employees of Teletronix Limited (respondent No. 4). Further, a mandamus has also been sought for absorption of

the petitioner by appointing him on the post of Instructor against the existing vacancy as on 31.12.1995 and also for payment of salary w.e.f. 1st April, 1996. (This writ petition was filed before the Allahabad High Court in 1996 where from it is received by transfer to this Court under provisions of U.P. Reorganization Act, 2000.)

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner after passing out the High School examination obtained a technical diploma certificate from Industrial Training Institute in the year 1975. On the basis of said qualification, initially the petitioner was appointed in January 1980 on daily wages as Technician with the Teletronix Limited, Bhimtal, District Nainital (respondent No. 4). Thereafter, with effect from 1st January 1981, the petitioner's services were regularised in the pay scale of Rs. 175/- - 250/- on the post of Technician. Subsequently, the petitioner was promoted w.e.f. 1st May, 1984 vide order dated 31st July, 1984 (copy Annexure- 1 to the writ petition). It is alleged in the writ petition that at the time when the petitioner was appointed as Technician, the essential qualification for the post was High School or equivalent with I.T.I. diploma in the concerning trade, which the petitioner fulfilled. It is further alleged in the writ petition that the petitioner's record has been outstanding and unblemished. The Teletronix Limited was a Government owned Company registered under Section 617 of the Indian Companies Act and is a subsidiary of Kumaon Mandal Vikas Nigam Limited (respondent No. 3). The Government of Uttar Pradesh vide its Notification dated 30th December, 1995 took a policy decision to windup the Teletronix Limited. A copy of said Government order is annexed as Annexure- 2 to the writ petition. In consequence to the decision of winding up of the company, the employees of Teletronix Limited were to be absorbed in different Government

Departments, Corporations etc by granting the age relaxation for the appointment. Also, the Government decided to freeze fresh

appointments in the various departments of Kumaon Division till all the retrenched employees of the Teletronix Limited are absorbed. A Committee was constituted in pursuance of the aforesaid Government order dated 30.12.1995 for the purposes of absorption of employees in various departments. Another Government order dated 26th February, 1996 was issued for absorption of the retrenched employees of the Teletronix Limited who were appointees of the period prior to 1st October 1986. A copy of the said Government order dated 26th February, 1996 is annexed as Annexure- 3 to the writ petition. It is alleged by the petitioner that even after fulfilling all the conditions as per the Government order, the petitioner has not been appointed as Instructor, instead, the respondent No. 2 has started recruitment process for filling up the existing vacancies in violation of the Government order dated 30.12.1995. Not only that, it is also alleged that other similarly situated employees have been given jobs in pursuance of the aforesaid Government order and letter dated 25th April, 1996 (copy Annexure- 5 to the writ petition) which was also issued by the Principal Secretary, Uttarakhand Vikas Vibagh, Government of U.P. to the Principal Secretary, Labour, Government of U.P. for issuing appropriate direction for absorption of 23 Technicians in different Industrial Training Institutes, but petitioner and some other Technicians are still not absorbed. Hence, this writ petition.

3) Respondent No. 2 has filed its counter affidavit in which facts relating to the petitioner's qualifications and his appointment in Teletronix Limited as Technician are not denied. However, it is stated in the counter affidavit that as per the U.P. Industrial Training Instructor Service Rules, 1991, the minimum qualification for the Instructor is Intermediate. As such, it is

alleged by the respondent No. 2 that the petitioner cannot be appointed as Instructor. In Para 8 of the counter affidavit, it has

been alleged that as per the Government order dated 30.12.1995 and 26.02.1996 relaxation is given only with regard to the age and not on qualification.

4) In the rejoinder affidavit the petitioner has stated that the 1991 Rules, whereby minimum qualification was enhanced from High School to Intermediate, does not apply in the case of the petitioner as he was appointee of prior to said year. A supplementary counter affidavit has also been filed by respondent No. 2 reiterating almost the same facts as mentioned in para 3 above.

5) I heard learned counsel for the parties and perused the affidavits, counter affidavits and rejoinder affidavits along with the annexures annexed thereto.

6) The short question for consideration before this Court is that, whether the petitioner has wrongly been denied appointment / absorption as Instructor by the respondent No. 2, if so, its effect?

7) Admittedly, the petitioner was holding the post of Technician. It is also not disputed that Respondent No. 4 Company i.e. Teletronix Limited has undergone the winding up process. It is also not denied that the orders dated 30.12.1995 and 26.02.1996 were issued by the Government for absorption of the employees of the Teletronix Limited in the various Government departments giving them certain relaxation. The point in dispute relates to whether the petitioner had no fulfilled the essential qualification for the post of Instructor for the purposes of absorption, if so, its effect? Before further discussion, it is pertinenet to mention here Para 3 of the Government Order No. 257 dated 26th February 1996 issued by

the Uttarakhand Vikas Vibagh of the State of Uttar Pradesh. The said para reads as under:

> "ljdkjh lsok@fuxeksa@mifeksa dh lsok esa HkrhZ gsrq fu/kkfjr U;wure 'kf{kd vgZrk rFkk vuqHko foi;d 'krsZ iwjk djus okys VsyhVkbfuDl@ dEI;wVsM VsyhfootZ fyfeVM deZpkjh@vf/kdkjh gh mDr lsok;kstu gsrq ik= gksaxsA ;fn ,sls deZpkjh VsyhVkbfuDl@ dEI;wVsM VsyhfootZ fyfeVM esa ,sls in ij fu;qDr gq, Fks ftudk dzhC; rFkk mRrjnkf;Ro ml in ds leku gS] ftl in ds fy, fu/kkfjr 'kf{kd ;kX;rk j[krs Fks] rks ;g le>k tk;sxk fd os orZeku in ds fy, ftlds fy, vc os vH;Fkhs gSa] viuh fu;qfDr ds lcc mijkDr in ds fy, fu/kkfjr 'kf{kd vgZrk izkIr djrs gSaA"

In view of the Para 3 of the Government order dated 26th February, 1996 as quoted above, it can very well be said that the petitioner did fulfill the qualification for the appointment / absorption because entire Government Order is to be read as a whole and not para 2 alone where it has been mentioned that the retrenched employees will be given appointment in accordance with the provisions of Service Rules of 1991, and the same is to be read with Para 3 of the Government order as quoted above. Even otherwise, the Government order cannot be interpreted to mean to give benefit to junior Technicians by depriving the seniors. Nor can it be interpreted to give 1991 Rules a retrospective effect. As such, the petitioners should not have been denied appointment as Instructor in such a situation.

8) Since in view of provisions of Section 89 and 90 of the U.P. Reorganization Act, 2000, in the pending litigation as on 09.11.2000 the State of Uttaranchal and the counterpart of the respondent No. 2 in the State of Uttaranchal are deemed to have been entered into the shoes of State of Uttar Pradesh and Director, Industrial Training of State of Uttar Pradesh, the writ petitions can be allowed as against the State of Uttaranchal and

the counterpart of respondent No. 2 in the State of Uttaranchal. Therefore, in the circumstances and in view of the above

discussion, the writ petition deserves to be allowed for the mandamus against the State of Uttaranchal and the counterpart of respondent No. 2 in State of Uttaranchal to give appointment to the petitioner as Instructor in compliance of the Government orders dated 30.12.1995 and 26.02.1996 with full salary w.e.f. 1st April, 1996, within a period of three months. No order as to costs.

**(P.C. Pant, J.)**

Dt: October 26, 2004
H.Negi